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SB 1756 SD 1 HD 1 RELATING TO THE ENVIRONMENTAL RESPONSE LAW

Statement for
House Committee on
Judiciary
Public Hearing - April 2, 1991

By
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SB 1756, SD 1, HD 1 amends the state's environmental response law, Chapter 128D, HRS, by adding sections relating to:

- 1) apportionment of clean up costs among liable parties;
- 2) administrative review of clean up orders;
- 3) de minimis settlements in civil or administrative actions;
- 4) citizen's suits;
- 5) duplicative enforcement under federal and state law; and
- 6) exempting removal and remedial actions from state or county permitting requirements.

Our statement on this bill does not represent an official position of the University of Hawaii.

We commend the efforts of the legislature to strengthen previous drafts of this legislation. During review of the antecedent bill last year, we pointed out the advantages of designing a state response law that corresponded closely with federal legislation. The inclusion of citizen's suits in the present draft directly reflects similar provisions in CERCLA.

However, we remain concerned that certain sections of the proposed bill may present opportunities for obstructive litigation which may interfere with response proceedings. For instance, on page 6, lines 13- 17 of the present draft appear to provide a loophole whereby a potentially responsible party may avoid substantive liability based on relative quantities of hazardous substances present at the facility. If major clean up costs arise from the progressive deterioration of a release scenario triggered by a relatively minor component of a facility's

hazardous inventory, the party responsible for that component appears to be protected from ultimate liability for the incident.

Also, in paragraph (e) of the same section (page 7, line 22 through page 8, line 3), we are concerned that settlement of the state's interest in a response action may preclude further liability sought through a citizen's suit which may address a separate, but related interest in the matter.